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11 VXN GROUP LLC; STRIKE 3 HOLDINGS, LLC;
12 GENERAL MEDIA SYSTEMS, LLC; and
13 MIKE MILLER14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **WESTERN DIVISION**17 MACKENZIE ANNE THOMA,
18 a.k.a. KENZIE ANNE, an
19 individual and on behalf of all
20 others similarly situated,

21 Plaintiff,

22 v.

23 VXN GROUP LLC, a Delaware
24 limited liability company;
25 STRIKE 3 HOLDINGS, LLC, a
26 Delaware limited liability
27 company; GENERAL MEDIA
28 SYSTEMS, LLC, a Delaware
limited liability company; MIKE
MILLER, an individual; and
DOES 1 to 100, inclusive,

Defendants.

Case No. **2:23-cv-04901 WLH (AGRx)****STRIKE 3 HOLDINGS, LLC'S,
GENERAL MEDIA SYSTEMS, LLC's,
AND MIKE MILLER'S NOTICE OF
SPECIAL MOTION AND SPECIAL
MOTION TO STRIKE (ANTI-SLAPP)
PURSUANT TO C.C.P. § 425.16;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Date: January 5, 2024

Time: 1:30 pm or later

Courtroom: 9B

*[Filed concurrently with Declaration of
Brad S. Kane; and [Proposed] Order]*

Complaint Filed: April 20, 2023

Removed: June 21, 2023

**TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL
DISTRICT OF CALIFORNIA AND TO PLAINTIFF, MACKENZIE ANNE
THOMA, AND HER ATTORNEYS OF RECORD:**

4 **PLEASE TAKE NOTICE** that on January 5, 2024, at 1:30 pm or as soon
5 thereafter as the matter may be heard before the Honorable Wesley L. Hsu,
6 Defendants Strike 3 Holdings, LLC (“Strike 3”), General Media Systems, LLC
7 (“General Media”), and Mike Miller (“Miller”) (collectively, the “Anti-SLAPP
8 Defendants”) will and hereby do move for an order striking pursuant to C.C.P.
9 § 425.16 (“Anti-SLAPP”) the following portions of MACKENZIE ANNE
10 THOMA’s (“Plaintiff”) First Amended Complaint (“FAC” at **Dkt. 26**): (i) Strike 3
11 as a named defendant and associated allegations [**Dkt. 26, ¶¶ 1, 6, 9, 13, 15, 19,**
12 **20, 22**]; (ii) General Media as a named defendant and associated allegations [**Dkt.**
13 **26, ¶¶ 1, 6, 9, 14, 15, 20, 22**]; and (iii) Miller as a named defendant and associated
14 allegations [**Dkt. 26, ¶¶ 1, 6, 10, 12, 15, 18, 19, 22**]

15 As grounds for this motion, the Anti-SLAPP Defendants rely upon the Anti-
16 SLAPP's prohibition of any cause of action against a defendant in furtherance of a
17 defendants' right to free speech in connection with a public issue. C.C.P.
18 § 425.16(b)(1). The FAC's *only* allegations against the Anti-SLAPP Defendants
19 are their involvement in the production, ownership, and distribution of movies,
20 which is protected conduct. *Daniel v. Wayans*, 8 Cal. App. 5th 367, 383 (2017).

21 Plaintiff does *not* allege that the Anti-SLAPP Defendants failed to pay
22 Plaintiff; Plaintiff merely alleges that the Anti-SLAPP Defendants should be jointly
23 and severally liable with VXN Group, LLC, because they engage in activities
24 squarely protected by the First Amendment [Dkt. 26, ¶¶ 1, 6, 9, 10, 12, 13, 14, 15,
25 19, 20, 22 (collecting every allegation against the Anti-SLAPP Defendants)]

26 Here, Plaintiff's seeks to impose joint liability on the Anti-SLAPP
27 Defendants based on their protected free speech activities. Thus, the wage and hour

1 allegations against the Anti-SLAPP Defendants concern protected activity. As a
2 result, an Anti-SLAPP motion is a proper mechanism to remove the Anti-SLAPP
3 defendants from this litigation.

4 Under Local Rule 7-3, Defendants' counsel met and conferred with
5 Plaintiff's counsel on November 13, 2023, regarding Defendants' intention to file
6 this Anti-SLAPP motion and the grounds upon which it will be made. Defendants'
7 and Plaintiff's counsel were unable to reach an agreement to obviate this motion.

8 Defendants' motion is based on this notice of motion and motion, the
9 attached memorandum of points and authorities filed in support of this motion, the
10 declaration of Brad S. Kane in support of this motion, on all the pleadings and
11 papers in this action, and on any oral argument entertained by the Court during the
12 hearing on this matter.

13 Dated: November 20, 2023 Respectfully submitted,

15 KANE LAW FIRM

16 By: /s/ Brad S. Kane

17 Brad S. Kane

18 Eric Clopper

19 Attorneys for Defendants

20 VXN Group LLC; Strike 3

21 Holdings, LLC; General Media

22 Systems, LLC; and Mike Miller

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6	“Porn-o-nomics: How one director is making a fortune by defying conventional wisdom,” <i>CBC Radio</i> , February 24, 2017 http://www.cbc.ca/radio/day6/episode-326- sanctuary-cities-la-la-land-vs-jazz-hollywood-in- china-porn-o-nomics-and-more-1.3994160/porn-o- nomics-how-one-director-is-making-a-fortune-by- defying-conventional-wisdom-1.3994167	3
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MEMORANDUM OF POINTS AND AUTHORITIES

Defendants Strike 3 Holdings, LLC (“Strike 3”), General Media Systems, LLC (“General Media”), and Mike Miller (“Miller”) (collectively, the “Anti-SLAPP Defendants”) hereby submit the following Memorandum of Points and Authorities in support of their Special Motion to Strike (“Defendants’ Motion”).¹

I. INTRODUCTION

Plaintiff's original Complaint failed to plead any specific allegations as to why Defendants Strike 3, General Media, and Miller were named in this Class Action for unpaid wages, since Plaintiff and the putative class contracted only with VXN Group LLC ("VXN").

On August 30, 2023, this Court found that Plaintiff's allegations against Strike 3, General Media, and Miller, were:

stated in wholly conclusory terms with little or no supporting facts. To the extent Thoma's claims rely on a theory of joint liability, then, those claims fail for lack of factual support. [Dkt. 23: 11:3-8 (citations omitted)]

Further, this Court remanded Plaintiff's UCL claim and dismissed the remaining portions of the Class Action Complaint with leave to amend. [Dkt. 23: 11:3-6]

On September 20, 2023, Plaintiff filed her First Amended Complaint (“FAC”). [Dkt. 26] In the FAC, for the *first* time, Plaintiff alleged Strike 3, General Media, and Miller are jointly liable with VXN for unpaid wages based on their protected First Amendment activities. “Movies and films generally are considered ‘expressive works’ subject to First Amendment protections.” *Daniel v. Wayans*, 8

¹ The phrase “Anti-SLAPP Defendants” intentionally excludes VXN Group, LLC (“VXN”), as Plaintiff’s claims against VXN, with whom Plaintiff directly contracted for payment, do not implicate First Amendment issues for purposes of the Anti-SLAPP. *Jordan-Benel v. Universal City Studios, Inc.*, 859 F.3d 1184, 1191-92 (9th Cir. 2017).

1 Cal.App.5th 367, 383 (2017) (internal citations omitted). Plaintiff's FAC asserts
2 that:

3 (i) Strike 3 is jointly liable with VXN because Strike 3 is the
4 “parent company and owner of the copyright for . . . films, photos
5 and other materials created by VXN[.]” [Dkt. 26, ¶ 19]

6 (ii) General Media is jointly liable with VXN because it is “the
7 main distributor for the films, photographs, and other materials
8 produced by VXN”, and “VXN[] cannot distribute its films
9 without the express consent of General Media.” [Dkt. 26, ¶ 20]

10 (iii) Miller is jointly liable with VXN based on Miller's
11 involvement in casting decisions and enforcement of policies on
12 film sets. [Dkt. 26, ¶ 18]

13 Since Plaintiff's claims against the Anti-SLAPP Defendants arise from their
14 free speech activities, the Court should dismiss Plaintiff's claims against them
15 unless Plaintiff establishes with admissible evidence that there is a probability that
16 the Plaintiff will prevail.

17 Significantly, on December 1, 2023, this Court will hear all Defendants'
18 Motion to Dismiss Plaintiff's FAC, which seeks, *inter alia*, to dismiss Plaintiff's
19 claims for failure to adequately plead joint liability. Once an anti-SLAPP motion
20 is filed, a plaintiff may not frustrate a hearing on the anti-SLAPP motion by
21 amending the complaint. *Simmons v. Allstate Ins. Co.*, 92 Cal.App.4th 1068, 1073
(2001).

22 **II. THE FACTS**

23 **A. Defendants' Websites Distribute Popular, Award-Winning
24 Content and Are Regularly Featured in the Media.**

25 Defendants are the owners, distributors, and producers of the websites, and
26 associated intellectual property of *vixen.com*, *blacked.com*, *tushy.com*,

1 *deeper.com, milfy.com, blackedraw.com, and tushyraw.com.* [Declaration of
2 **Brad S. Kane (“BSK Decl.”), ¶ 28]**

3 The websites have approximately *15 million visitors per month* and a loyal
4 following, including over 2.7 million Instagram followers. [BSK Decl., ¶ 28]
5 Additionally, its unique cinematic films have won many awards. Some recent
6 awards include: (i) Best Directing – Narrative Production (AVN, 2022); (ii) Best
7 New Site (XBIZ, 2022); and (iii) Best Anthology Series of Channel (AVN, 2023).
8 Moreover, just this past week, Defendants’ movies were nominated *over 60 times*
9 for Adult Video News (“AVN”)’s 2024 awards.²

10 Defendants’ websites and brands are also routinely featured in the media.
11 Forbes,³ The Daily Beast,⁴ CBC Radio,⁵ Rolling Stone,⁶ and Jezebel⁷ are just a
12 few examples of media that has published substantial profiles on Defendants.
13 Defendants’ websites and brands have been featured in mainstream music videos
14

15
16 ² https://avn.com/awards/2024_nominees [BSK Decl., Ex. 1].

17 ³ “How One Pornographer is Trying to Elevate Porn to Art,” *Forbes*, July 20, 2017
18 <https://www.forbes.com/sites/susannahbreslin/2017/07/20/pornographer-greg-lansky-interview/#2301d3ae6593> [BSK Decl., Ex. 2]

19 ⁴ “Meet the Man Making Porn Great Again,” *The Daily Beast*, February 18, 2017
20 <http://www.thedailybeast.com/meet-the-man-making-porn-great-again> [BSK Decl., Ex. 3]

21 ⁵ “Porn-o-nomics: How one director is making a fortune by defying conventional
22 wisdom,” *CBC Radio*, February 24, 2017 <http://www.cbc.ca/radio/day6/episode-326-sanctuary-cities-la-la-land-vs-jazz-hollywood-in-china-porn-o-nomics-and-more-1.3994160/porn-o-nomics-how-one-director-is-making-a-fortune-by-defying-conventional-wisdom-1.3994167> [BSK Decl., Ex. 4]

23 ⁶ “Versace, Champagne and Gold: Meet the Director Turning Porn Into High Art.”
24 *RollingStone*, April 15, 2018 <https://www.rollingstone.com/culture/features/versace-champagne-and-gold-meet-the-director-turning-porn-into-high-art-629908/> [BSK Decl., Ex. 5]

25 ⁷ “The One Percent Fantasies of Greg Lansky’s Vixen” *Jezebel*, January 9, 2019
26 <https://jezebel.com/jerking-off-to-capitalism-the-1-percent-fantasies-of-g-1829976586> [BSK Decl., Ex. 6]

1 with musicians like G-Eazy,⁸ Jamie Foxx, and others.⁹ Kanye West announced on
2 the Jimmy Kimmel show that one of Defendants' websites, Blacked.com, was his
3 favorite.¹⁰ Defendants' movies have even been advertised on billboards in
4 Hollywood.¹¹

5 The mainstream press is interested in what happens on Defendants' sets.
6 Indeed, Maitland Ward, a former Boy Meets World Star, wrote at length about her
7 experience as an actress for Defendants' films in her recent memoir, which has
8 been detailed by the media.¹² Defendants' movies also receive press and public
9 attention for creating feminist, ethical porn.¹³ During the pandemic, Vice magazine
10 reported on how Defendants' sent film equipment to adult film performers so that
11 they could continue shooting content in a safe way.¹⁴

12 Defendants' actions often draw media attention as a leader in the industry.
13 Just recently, Defendants were criticized for complying with an unpopular Texas
14
15
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19 ⁸ <https://hiphopdx.com/news/id.55268/title.g-eazy-throws-a-raunchy-mansion-party-for-still-be-friends-video> [BSK Decl., Ex. 7]

20 ⁹ <https://uproxx.com/music/g-eazy-moana-video-jack-harlow/> [BSK Decl., Ex. 8]

21 ¹⁰ "Kanye West's Favorite Pornographer is a Master of SFW Marketing," *AdAge*,
22 August 17, 2018 <https://adage.com/article/cmo-strategy/sfw-pornographer/314604>
[BSK Decl., Ex. 9]

23 ¹¹ <https://www.thedailybeast.com/whats-behind-that-history-making-porn-billboard-in-hollywood> [BSK Decl., Ex. 10]

24 ¹² <https://www.ladbible.com/entertainment/maitland-ward-will-friedle-adult-videos-career-change-651155-20230509> [BSK Decl., Ex. 11]

25 ¹³ <https://www.elitedaily.com/dating/what-is-feminist-porn-where-to-watch> [BSK
26 Decl., Ex. 12]

27 ¹⁴ <https://www.vice.com/en/article/xgq937/vixen-blacked-offers-equipment-shoot-porn-at-home> [BSK Decl., Ex. 13]

age verification law.¹⁵ Likewise, Defendants' steadfast approach to enforcing its intellectual property has drawn media interest.¹⁶

B. Thoma is a Public Figure Who Spoke Repeatedly and at Length to the Media About working with Defendants.

Plaintiff Thoma a/k/a Kenzie Anne has over 800 thousand Instagram followers. [BSK Decl., ¶ 29] Moreover, Thoma touts her status as a public figure. *See* FAC ¶ 7 (Plaintiff "is a decorated and well-known adult film actress... She has been named 'Pet of the Year' by Penthouse magazine and shortly before the filing of this Complaint appeared on the cover of Hustler magazine."); *see also* FAC ¶ 8 (describing Plaintiff's successful career history).

Before filing this lawsuit, Thoma gave multiple interviews detailing her experience working with Defendants.¹⁷ Specifically, she stated, "VMG has been the biggest blessing in my career. I've been treated like a queen there."¹⁸ AVN described her rise to fame by stating: "[a]lready under contract with Vixen, she's the first-round draft pick who skipped the minor leagues and became an all-star as

¹⁵ <https://www.theverge.com/2023/10/12/23914832/texas-hb-1181-porn-age-verification-vixen-media-group> [BSK Decl., Ex. 14] (note: the article contains an error as Defendants' do require age verification, and the law is in effect). [BSK Decl., ¶ 14]

¹⁶ <https://avn.com/business/articles/legal/strike-3-holdings-scores-another-legal-victory-for-anti-piracy-885008.html> [BSK Decl., Ex. 15]; *see also* <https://www.sfgate.com/news/bayarea/article/strike-3-s-lawyer-defends-reliability-of-17790945.php> [BSK Decl., Ex. 16].

¹⁷ <https://www.xbiz.com/news/260179/q-a-glamcore-vixen-kenzie-anne-dazzles-the-lens> [BSK Decl., Ex. 17]; *see also* <https://avn.com/business/articles/video/kenzie-anne-feature-901581.html> [BSK Decl., Ex. 18]; *see also* <https://avn.com/business/articles/video/emily-willis-kenzie-anne-discuss-new-ventures-902883.html> [BSK Decl., Ex. 19]

¹⁸ <https://www.xbiz.com/news/260179/q-a-glamcore-vixen-kenzie-anne-dazzles-the-lens> [BSK Decl., Ex. 20]

1 a rookie.”¹⁹ “Her drive is obvious during the shoots she’s helped conceive for
2 Vixen, and it’s even more apparent when she talks about her goals for the future.”
3 *Id.* And, she even modelled her own company after Defendants.²⁰ (“Much like
4 [Defendants’ brand]—for which she’s already shot two scenes—Kenzie said she’s
5 focusing on producing glamorous porn.”)

6 After the filing of this lawsuit, Thoma’s lawyer David Bibiyan (“Bibiyan”)
7 sought media attention based on this case. Displayed on Bibiyan’s website under
8 “Cases in the Media” is a summary of the lawsuit,²¹ and a link to an interview by
9 him on this matter.²² In that article, Bibiyan noted that VZN has a “powerful name”
10 in the adult film industry, and “[this lawsuit] could also spark industry-wide change
11 among studios regarding how they treat and classify their talent. Vixen is hardly
12 the only studio that classifies its performers as independent contractors.” *Id.*

13 The press continues to report on the case because of the impact it can have
14 on so many individuals in the industry.²³ Plaintiff’s counsel gave another interview
15 opining how the Court’s ruling dismissing Plaintiff’s original Complaint for having
16 “copy-and-paste” pleadings was actually a “substantive victory” for his client:

17 The reason why we believe the ruling [granting Defendants’ motion
18 to dismiss without prejudice] to be favorable is because [the]
19 defendants . . . advanced an argument that its performers are
20 ‘professional actors’ and thus not subject to many of the protections
of other employees, which is the subject of our lawsuit,” Bibiyan

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22 ¹⁹ <https://avn.com/business/articles/video/kenzie-anne-feature-901581.html> [BSK
Decl., Ex. 21]

23 ²⁰ <https://avn.com/business/articles/video/emily-willis-kenzie-anne-discuss-new-ventures-902883.html> [BSK Decl., Ex. 22]

24 ²¹ <https://www.tomorrowlaw.com/cases-in-the-media-kenzie-anne-vs-vixen-media-group/> [BSK Decl., Ex. 23]

25 ²² <https://porncrush.com/articles/kenzie-anne-wasnt-scared-to-step-up-in-class-action-lawsuit-vs.-vixen-media-group/> [BSK Decl., Ex. 24]

26 ²³ <https://www.xbiz.com/news/276445/court-dismisses-bulk-of-labor-claims-against-vmg> [BSK Decl., Ex. 25]

1 explained in an email. “The court disagreed, finding that an actor
2 working for defendants does not have the bargaining power of, say,
3 Gal Gadot, and, thus, is entitled to the protections of other California
4 employees. This was a substantive win. Thus, we find that [the]
5 defendants’ motion to dismiss turned out to be a huge backfire, if
anything, for [the] defendants.²⁴

6 With each new filing, the press continues to update the public on the case.²⁵

7 **C. Thoma’s Original Complaint Only Contained Conclusory
8 Allegations Against The Anti-SLAPP Defendants.**

9 In its August 30, 2023 Order, this Court held that the allegations in Plaintiff’s
10 original Complaint against the Anti-SLAPP Defendants were “stated in wholly
11 conclusory terms with little or no supporting facts.” [Dkt. 23 at 11:2-8 (internal
12 citations omitted)] In turn, the Court dismissed all Plaintiff’s Labor Code claims
13 against the Anti-SLAPP Defendants with leave to amend and remanded Thoma’s
14 UCL claim to state court. [Dkt. 23: 14:3-6]

15 **D. Thoma’s FAC’s Allegations Against Each Anti-SLAPP
16 Defendant Arises From Their Protected Activity under the First
17 Amendment.**

18 On September 20, 2023, Thoma filed her FAC. Thoma’s FAC added new
19 allegations against the Anti-SLAPP Defendants. However, upon closer inspection,
20 Thoma alleges that the Anti-SLAPP Defendants are liable to Plaintiff on the basis
21 that they distribute, own the copyright, or produce the adult video content that VZN
22 hired Plaintiff to perform in. [FAC ¶¶ 12–23]

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26 ²⁴ <https://avn.com/business/articles/legal/counsel-in-kenzie-anne-vmg-lawsuit-speak-out-921568.html> [BSK Decl., Ex. 26]

27 ²⁵ <https://avn.com/business/articles/legal/vixen-files-motion-to-dismiss-kenzie-anne-labor-lawsuit-entirely-922958.html> [BSK Decl., Ex. 27]

1. Plaintiff Alleges Strike 3 is Jointly Liable With VXN Because Strike 3 Owns VXN and the Copyrights to VXN's Movies.

The FAC does *not* allege that Strike 3 failed to pay Plaintiff. [Dkt. 26, ¶¶ 1, 6, 9, 13, 15, 19, 20, 22 (citing every mention of “Strike 3” in the FAC, and containing no allegation that Strike 3 failed to pay Plaintiff)] Instead, the FAC alleges that Strike 3 is “jointly and severally liable” for VXN’s failure to pay Plaintiff because Strike 3 is “the parent company and owner of the copyright for VXN,” and maintains total control over working conditions at VXN. [Dkt. 26, ¶ 19]

2. Plaintiff Alleges General Media is Jointly Liable With VXN Because General Media Distributes VXN's Movies.

The FAC does *not* allege that General Media failed to pay Plaintiff. [Dkt. 26, ¶¶ 1, 6, 9, 14, 15, 20, 22 (citing every mention of “General Media” in the FAC, and containing no allegation that General Media failed to pay Plaintiff)] Instead, the FAC alleges that General Media is “jointly and severally liable” for VXN’s failure to pay Plaintiff because General Media “was the main distributor for the films,” and because it exerted a “level of control . . . over [VXN]” such that [VXN] cannot distribute its films without [General Media’s] consent.” [Dkt. 26, ¶ 20]

3. Plaintiff Alleges Miller is Jointly Liable With VXN Because Miller Produces and Directs Some of VXN's Movies.

The FAC does *not* allege Miller failed to pay Plaintiff. [Dkt. 26, ¶¶ 1, 6, 10, 12, 15, 18, 19, 22 (citing every mention of “Miller” in the FAC, and containing no allegation that Miller failed to pay Plaintiff)] Instead, the FAC alleges that Miller is “jointly and severally liable” for VXN’s failure to pay Plaintiff because Miller caused VXN to violate the Labor Code provisions under § 558.1.²⁶ [Dkt. 26, ¶¶

²⁶ Plaintiff's Labor Code § 558.1 allegations merely parrot the statutory language. [Dkt. 26, at ¶ 18]

1 **12, 18]** Specifically, Plaintiff clarifies that Miller is the individual who hires and
2 terminates the actors, determines their compensation, and assists in wardrobe
3 selection and directing scenes. **[Dkt. 26, ¶¶ 12, 18]**

4 **III. LEGAL STANDARD**

5 “California has a statute designed to discourage ‘strategic lawsuits against
6 public participation’ (“SLAPPs”). The Ninth Circuit has explained that SLAPPs
7 “masquerade as ordinary lawsuits but are brought to deter common citizens from
8 exercising their political or legal rights or to punish them for doing so.” *Woulfe v.*
9 *Universal City Studios LLC*, 2022 WL 18216089, at *2 (C.D. Cal. Dec. 20, 2022)
10 citing *Hilton v. Hallmark Cards*, 599 F.3d 894, 902 (9th Cir. 2010). “An anti-
11 SLAPP motion may be brought against state law claims pending in federal court.”
12 *Shande v. Zoox, Inc.*, No. 22-CV-05821-BLF, 2023 WL 5211628, at *2 (N.D. Cal.
13 Aug. 14, 2023).

14 In evaluating an anti-SLAPP motion, “courts ask whether ‘the claim call[s]
15 for the anti-SLAPP statute’s protections’ and, if so, whether the claim has
16 ‘sufficient merit.’” *Gunn v. Drage*, 65 F.4th 1109, 1118 (9th Cir. 2023). “In a
17 catchall provision relevant to this case, the statute specifies that such acts include
18 ‘conduct in furtherance of the exercise of the constitutional right of petition or the
19 constitutional right of free speech in connection with a public issue or an issue of
20 public interest.’” *FilmOn.com Inc. v. DoubleVerify Inc.*, 7 Cal. 5th 133, 139–40,
21 (2019).

22 “For purposes of the Federal Rules of Civil Procedure, a motion brought on
23 anti-SLAPP grounds can either be analogous to a motion to dismiss or a motion for
24 summary judgment. If a defendant moves to strike/dismiss based on purely legal
25 arguments and the fact that a complaint does not allege sufficient facts to support
26 its stated causes of action, this Court analyzes the motion under the standards set

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1 out in FRCP 8 and 12(b)(6).” *Clifford v. Trump*, 339 F. Supp. 3d 915, 922 (C.D.
2 Cal. 2018), aff’d, 818 F. App’x 746 (9th Cir. 2020).

3 **IV. THE ANTI-SLAPP DEFENDANTS’ MOTION SHOULD BE**
4 **GRANTED WITHOUT LEAVE TO AMEND.**

5 **A. This Motion is Timely.**

6 Plaintiff’s original Complaint did *not* implicate the Anti-SLAPP Defendants’
7 free speech rights. When dismissing Plaintiff’s original Complaint, this Court
8 found that the allegations made against Defendants ““are stated in wholly
9 conclusory terms with little or no supporting facts.’ To the extent Thoma’s claims
10 rely on a theory of joint liability, then, those claims fail for lack of factual support.”

11 [Dkt. 23, 11:4-8]

12 On September 20, 2023, Plaintiff filed her FAC, which *for the first time*
13 provided notice to Defendants that Plaintiff’s claims against the Anti-SLAPP
14 Defendants are rooted in their First Amendment activities. *See* C.C.P. § 425.16
15 (“(f) The special motion may be filed within 60 days of the service of the complaint
16 or, in the court’s discretion, at any later time upon terms it deems proper”); *see also*
17 *Hasso v. City of San Diego*, No. 19-CV-368 TWR (DEB), 2021 WL 4226142, at
18 *4 (S.D. Cal. Sept. 16, 2021). Thus, the last day to file this Motion without leave
19 of this Court is November 20, 2023.

20 **B. Plaintiff’s Claims Against Defendants Arise from the Anti-**
21 **SLAPP Defendants’ Constitutional Right of Free Speech.**

22 “To clear the first hurdle, [the Anti-SLAPP Defendants’] must show that the
23 ‘act underlying the plaintiff’s cause of action’ was ‘itself ... an act in furtherance of
24 the right of petition or free speech.’” *Young v. NeoContext, Inc.*, 2023 WL 6166975,
25 at *3 (C.D. Cal. Sept. 5, 2023). “[T]he focus is on determining what the defendant’s
26 activity is that gives rise to his or her asserted liability—and whether that activity
27 constitutes protected speech or petitioning’ under the anti-SLAPP statute.” *Id.*

1 “Typically, a pleaded cause of action states a legal ground for recovery
2 supported by specific allegations of conduct by the defendant on which the plaintiff
3 relies to establish a right to relief. If the supporting allegations include conduct
4 furthering the defendant's exercise of the constitutional rights of free speech or
5 petition, the pleaded cause of action ‘aris[es] from’ protected activity, at least in
6 part, and is subject to the special motion to strike authorized by section
7 425.16(b)(1).” *Baral v. Schnitt*, 1 Cal.5th 376, 381–82 (2016).

8 Significantly, Plaintiff does not allege the Anti-SLAPP Defendants were in
9 anyway responsible or had an obligation to pay Plaintiff. Instead, their First
10 Amendment protected activities relating to the production of motion pictures gave
11 rise to their joint liability. *See Jordan-Benel v. Universal City Studios, Inc.*, 859
12 F.3d 1184, 1193 (9th Cir. 2017) (“The anti-SLAPP motion in *Wilder* was
13 successful because the activities underlying the plaintiff's tortious interference
14 claims against CBS were the development, production, and distribution of the
15 television show. *See id.* at *10. As the plaintiff alleged, it was those actions that
16 were intended to, and did, induce Sony to breach its implied contract with *Wilder*.”)

17 1. The Anti-SLAPP Defendants' Protected Speech Give Rise To
18 Their Asserted liability.

19 Under § 425.16 “[a] cause of action against a person *arising from any act of*
20 *that person* in furtherance of the person's right of petition or free speech . . . in
21 connection with a public issue shall be subject to a special motion to strike . . .” (§
22 425.16, subd. (b)(1), italics added.) “As the italicized language indicates, ‘[t]he
23 anti-SLAPP statute's definitional focus is not the form of the plaintiff's cause of
24 action but, rather, the defendant's *activity* that gives rise to his or her asserted
25 liability—and whether that activity constitutes protected speech or petitioning.’”
26 *Contreras v. Dowling*, 5 Cal. App. 5th 394, 407 (2016).

1 “[F]or anti-SLAPP purposes [the] gravamen [of plaintiff’s cause of action]
2 is defined by the acts on which liability is based[.]’ To determine the gravamen of
3 [Plaintiff’s] cause of action, we ‘must examine the allegedly wrongful conduct
4 itself, without particular heed to the form of action within which it has been
5 framed.’ *Id.* “[F]or purposes of anti-SLAPP, the conduct from which a claim arises
6 is the conduct that constitutes the specific act of wrongdoing challenged by the
7 plaintiff.” *Jordan-Benel*, 859 F.3d at 1191.

8 2. The Production, Distribution And Ownership of Movies Is
9 Protected Free Speech.

10 “Movies and films generally are considered ‘expressive works’ subject to
11 First Amendment protections.” *Daniel*, 8 Cal.App.5th at 383 (internal citations
12 omitted). “[F]ilms and movies [do not] lose their constitutional protection because
13 they are undertaken to generate a profit. Because a film is an expressive work, its
14 creation is also an exercise of free speech.” *Id.* (internal citations omitted).

15 “Under California law, the creation, production, and distribution of
16 entertainment such as television or film are activities in furtherance of the exercise
17 of the right to free speech, and thus protected under the anti-SLAPP statute.” *ITN*
18 *Flix, LLC v. Hinojosa*, 2019 WL 3562669, at *4 (C.D. Cal. Aug. 6, 2019). *See also*
19 *Tamkin v. CBS Broad., Inc.*, 193 Cal. App. 4th 133, 143 (2011) (“The creation of a
20 television show is an exercise of free speech.”); *Ojjeh v. Brown*, 43 Cal. App. 5th
21 1027, 1040 (2019) (“Defendants’ solicitation of investment funding is also
22 reasonably viewed as conduct in furtherance of the documentary’s production.”)
23 Likewise, the Anti-SLAPP Defendants’ activities that has led to its allegations of
24 joint liability with VZN is protected First Amendment speech.

1 3. Plaintiff Alleges Strike 3 is Jointly Liable with VXN For The
2 Protected Activities of Owning, Producing and Distributing Movies.

3 Here, the FAC's allegations are *not* that Strike 3 failed to pay Plaintiff.
4 Instead, Plaintiff alleges that Strike 3 is liable because:

5 “STRIKE 3 owns, distributes, and produces pornographic films,
6 images, and materials created by VXN GROUP. STRIKE 3 was . . .
7 . the copyright holder for VXN GROUP and the various films,
8 photographs, and other materials produced by VXN GROUP.”
[Dkt. 26 ¶ 13]

9 “STRIKE 3, as the parent company and owner of the copyright for
10 VXN GROUP . . . maintains a level of control over VXN GROUP
11 and its employees (including Plaintiff and Class Members) where
12 the policies and procedures of VXN GROUP are truly the policies
13 and procedures of STRIKE 3 as well. Indeed, . . . STRIKE 3, by
14 exercising control over VXN GROUP and MILLER, thus exercises
15 control over Plaintiff and Class Members in terms of hiring, firing,
16 compensation, performance supervision, discipline, and
17 enforcement of workplace rules. As such, . . . STRIKE 3 is jointly
18 and severally liable for the wrongful actions undertaken by VXN
19 GROUP.” [Dkt. 26 ¶ 19]

20 Thus, Plaintiff's claims against Strike 3 arise directly from the protected activity of
21 owning, distributing, and producing movies.

22 4. Plaintiff Alleges General Media is Jointly Liable with VXN For
23 The Protected Activity of Distributing Movies.

24 Here, the FAC's allegations are *not* that General Media failed to pay
25 Plaintiff. Instead, Plaintiff alleges that General Media is jointly liable for the
26 payroll decisions of VXN which resulted in the underlying claims, because General
27 Media distributes VXN's movies.

28 According to Plaintiff, General Media “is an application computer software
29 company that distributes the films, photographs, and other materials produced by
30 [VXN].” [Dkt. 26 ¶ 14] General Media “was the main distributor for the films,

1 photographs, and other materials produced by [VXN] and STRIKE 3... [t]he level
2 of control [General Media] possessed over [VXN] is such that [VXN] cannot
3 distribute its films without the express consent of [General Media]. As such,
4 [General Media] is jointly and severally liable for the wrongful actions undertaken
5 by [VXN].” **[Dkt. 26 ¶ 20]**

6 As a result, General Media’s distribution or broadcast is First Amendment
7 activity protected by California’s Anti-SLAPP law. *Doe v. Gangland Prods., Inc.*,
8 730 F.3d 946, 955 (9th Cir. 2013) (“But for the broadcast and Defendants’ actions
9 in connection with that broadcast, Plaintiff would have no reason to sue
10 Defendants.”) Thus, Plaintiff’s claims against General Media arise directly from
11 the protected activity of distribution of movies.

12 **5. Plaintiff Alleges Miller is Jointly Liable with VXN For The**
13 **Protected Activity of Producing and Directing Movies.**

14 Here, the FAC’s allegations are *not* that Miller failed to pay Plaintiff.
15 Instead, Plaintiff’s FAC alleges that Miller is liable because VXN Group was
16 founded by Miller “with the goal of creating higher-quality videos that would be
17 considered more “artistic” than the normal realm of adult video content.” FAC ¶
18 10.

19 “MILLER plays an active role in the enforcement and creation of the policies
20 and procedures set in place by VXN GROUP. In fact, MILLER was
21 physically present during many modeling shoots and on filming days and
had a direct role in directing the scenes and choosing outfits, for example.”
[Dkt. 26 ¶ 12]

22 “Miller is engaged in the decisions to hire Plaintiff and Class Members, to
23 terminate the contracts of Plaintiff and Class Members, and to determine
24 their compensation. . . . MILLER directly created the policies and
25 procedures put forth by VXN GROUP. Also, . . . MILLER played an active
26 role in the enforcement of those policies and procedures, supervises the
27 performance of Plaintiff and Class Members, and has the ability to discipline
them, as he was often present on set and reprimanded Plaintiff and Class

1 Members for not complying with VXN GROUP's policies and procedures.”
2 [Dkt. 26 ¶ 18]

3 All of Miller's activities that Plaintiff alleges led to his liability are protected
4 by the First Amendment. Specifically, directing and choosing wardrobe in
5 furtherance of creating motion pictures are protected activities. “Because a film is
6 an expressive work, its creation is also an exercise of free speech.” *Daniel*, 8
7 Cal.App.5th at 383. Likewise, hiring and terminating professional actors is
8 protected activity. *Wilson v. Cable News Network, Inc.*, 7 Cal. 5th 871, 896 (2019)
9 (“[A] television producer's decision about whom to cast in a program can constitute
10 part of the message conveyed, thus meriting anti-SLAPP protection.”). So too are
11 on set production policies and employment decisions relating to motion picture
12 productions. *Hunter v. CBS Broad. Inc.*, 221 Cal.App.4th 1510, 1521, (2013)
13 (“CBS's selections of its KCBS and KCAL weather anchors, which were
14 essentially casting decisions regarding who was to report the news on a local
15 television newscast, “helped advance or assist” both forms of First Amendment
16 expression. The conduct therefore qualifies as a form of protected activity.”) Thus,
17 Plaintiff's claims against Miller arise directly from the protected activities of
18 producing and directing movies.

19 **C. Defendant's Speech is in Connection with a Public Issue.**

20 “To meet their initial burden, Defendants must also show that their conduct
21 was ‘in connection with a public issue or an issue of public interest.’” C.C.P.
22 § 425.16(e). “[T]he catchall provision demands ‘some degree of closeness’
23 between the challenged statements and the asserted public interest.... ‘[I]t is not
24 enough that the statement refer to a subject of widespread public interest; the
25 statement must in some manner itself contribute to the public debate.’” *Ojjeh*, 43
26 Cal.App.5th at 1042.

27 “Attempting to protect against ‘lawsuits brought primarily to chill’ the
28 exercise of speech and petition rights, the Legislature embedded context into the

1 statutory preamble, ‘declar[ing] that it is in the public interest to encourage
2 continued participation in matters of public significance.’” *FilmOn.com Inc.*, 7
3 Cal.5th at 143.

4 “In articulating what constitutes a matter of public interest, courts look to
5 certain specific considerations, such as whether the subject of the speech or activity
6 ‘was a person or entity in the public eye’ or ‘could affect large numbers of people
7 beyond the direct participants’; and whether the activity ‘occur[red] in the context
8 of an ongoing controversy, dispute or discussion.’” *FilmOn.com Inc.*, 7 Cal.5th at
9 145 (citation omitted).

10 “First, courts ask what public issue or issue of public interest the speech in
11 question implicates. Courts look to the content of the speech in making this
12 determination. Second, Courts ask what functional relationship exists between the
13 speech and the public conversation about some matter of public interest.” *Woulfe*,
14 2022 WL 18216089, at *5 citing *FilmOn.com Inc.*, 7 Cal.5th at 149–50.

15 “[W]e examine whether a defendant—through public or private speech or
16 conduct—participated in, or furthered, the discourse that makes an issue one of
17 public interest.” *FilmOn.com Inc.*, 7 Cal.5th at 151.

18 **1. Defendants’ Activity Implicates an Issue of Public Interest.**

19 “While there is no definitive test for what constitutes a “public issue,” under
20 one widely used test, a public issue may fall under three categories: ‘(1) statements
21 concerning a person or entity in the public eye; (2) conduct that could directly affect
22 a large number of people beyond the direct participants; (3) or a topic of
23 widespread, public interest.’” *Young*, WL 6166975, at *5 (citing *Hilton*, 599 F.3d
24 at 906).

25 Defendants’ creation, production, distribution and ownership of adult films
26 are in the public eye. Moreover, Defendants speech relates here to Plaintiff, herself
27 a well-known person in the public eye. *Brodeur v. Atlas Ent., Inc.*, 248 Cal.App.4th
28

1 665, 675–76 (2016) (“In these circumstances, we can see no basis for concluding
2 that a farcical scene about microwave ovens—clearly emanating from matters in
3 which the public was interested during the relevant decade—is anything other than
4 protected activity within the meaning of the anti-SLAPP statute.)

5 As evidence of the Parties’ fame, the underlying lawsuit has received
6 considerable press and attention. Plaintiff’s counsel even lists this lawsuit on his
7 website under “Cases in the Media”²⁷ and has given interviews to the press on the
8 case including this Court’s previous decision.²⁸

9 Moreover, as set forth above, Defendants conduct, including the creation,
10 production, distribution and ownership of the films, particularly as it relates to the
11 treatment of its professional film stars, is conduct that directly affects a large
12 number of people beyond the direct participations. Indeed, as set forth above, long
13 before the filing of this lawsuit, Plaintiff gave public interviews regarding her
14 experience working with Defendants. Moreover, Defendants’ activities affect not
15 just Plaintiff, but hundreds of adult film stars that perform for Defendants.

16 Finally, Defendants creation, production, distribution and ownership of its
17 films is a topic of widespread public interest. Defendants’ films are among the
18 most popular adult films, its websites have a daily visit rate of over 15 million
19 people, and the films have won numerous awards *See ITN Flix, LLC*, 2019 WL
20 3562669, at *4 (finding the “activities advancing the creation, production, and
21 distribution of the Machete films, including casting Trejo, are actions in furtherance
22 of the exercise of free speech in connection with an issue of public interest and
23 subject to the anti-SLAPP statute” because it was released in theatres domestically,
24 named as one of the top 100 domestic grossing films, and nominated for numerous
25 awards.); *Symmonds v. Mahoney*, 31 Cal.App.5th 1096, 1109 (2019) (“Here,
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27 ²⁷ [BSK Decl., Ex. 23]

28 ²⁸ [BSK Decl., Exs. 24, 26]

1 defendants have made a *prima facie* showing sufficient to establish that Mahoney's
2 music and concerts were of interest to the public. [Eddie Money] sold millions of
3 records and [more than 300,000 followers on Facebook]. Defendants also
4 submitted news articles from different media outlets dated as recently as 2016
5 discussing Mahoney and his music[.]”

6 **2. Defendants' Activity is Functionally Related to the Issue of**
7 **Public Interest.**

8 “The more challenging question is whether a ‘functional relationship exists
9 between the speech and the public conversation about some matter of public
10 interest.’ *FilmOn*, 7 Cal.5th at 149–150. The “catchall provision demands ‘some
11 degree of closeness’ between the challenged statements and the asserted public
12 interest.” *Id.* at 150. “[I]t is not enough that the statement refer to a subject of
13 widespread public interest; the statement must in some manner itself contribute to
14 the public debate.” *Id.*

15 Here, all of Defendants’ activity is functionally related to matters of public
16 interest. “Movies are a ‘significant medium for the communication of ideas. They
17 may affect public attitudes and behavior in a variety of ways, ranging from direct
18 espousal of a political or social doctrine to the subtle shaping of thought which
19 characterizes all artistic expression. The importance of motion pictures as an organ
20 of public opinion is not lessened by the fact that they are designed to entertain as
21 well as to inform.’” *Daniel*, 8 Cal.App.5th at 383.

22 Moreover, the fact that the movies involve adult content and adult film stars
23 does not negate the public interest analysis. “[A]t this step, the ‘inquiry does not
24 turn on a normative evaluation of the substance of the speech,’ and the Court is ‘not
25 concerned with the social utility of the speech at issue, or the degree to which it
26 propelled the conversation in any particular direction.” *Young*, 2023 WL 6166975,
27 at *4 (citing *FilmOn.com Inc.*, 7 Cal.5th at 151). “Additionally, ‘the fact that

1 expression takes a form of nonverbal, visual representation [does not] remove it
2 from the ambit of First Amendment protection.” *Id.* citing *Comedy III Prods., Inc.*
3 *v. Gary Saderup, Inc.*, 25 Cal.4th 387, 398 (2001).

4 In *Woloszynska v. Netflix, Inc.*, No. 23-CV-00636-BLF, 2023 WL 7166828,
5 at *3 (N.D. Cal. Oct. 30, 2023) the Northern District of California found Netflix’s
6 use of a photograph in a television show was a matter of public interest because,
7 citing, *Tamkin*, 193 Cal.App.4th at 139, “the writer’s action was in furtherance of
8 free speech rights because it ‘helped to advance or assist in the creation, casting,
9 and broadcasting of an episode of a popular television show.’” Likewise, here, the
10 dispute between Thoma and Strike 3, General Media, and Miller involves a famous
11 adult movie actresses’ role in adult movies that are owned, produced, and
12 distributed by Defendants. The creation of the films, and who stars in them, as well
13 as their release, is a matter of public interest, as evident by the amount of press and
14 media attention relating to the company and Thoma’s role in the films.

15 The speech implicated here, the creation and dissemination of popular adult
16 films, does not involve a private issue between two parties who may be in the public
17 eye, but instead activities that impact all adult performers in the industry, as cited
18 in the FAC, and as Bibiyan has reported to the media. *See* FAC ¶ 2 (“Vixen Media
19 Group runs a powerful, lucrative, and well-known adult film production company
20 which many, if not all, adult film performers perform for at some point in their
21 careers due to its unique role in providing upscale adult film products in the
22 industry.”); *See fns.* 21-27; *See also Hilton*, 599 F.3d at 908 (“Hallmark’s card does
23 not concern some personal detail of Hilton’s life (such as a divorce), it concerns her
24 trademark phrase and her public persona—the very things that interest people about
25 her.”)

26 Finally, Plaintiff alleges that Strike 3, General Media and Miller are jointly
27 liable for the actions of VXN, which relate to misclassification of adult actors as

1 independent contractors. This issue – whether liability surrounding
2 misclassification can be extended to owners, distributors, and producers of adult
3 content, simply by engaging in first amendment protected activity regardless of
4 their role in the actual payment and compensation of adult performers, impacts
5 thousands of companies and individuals in the industry. This is why the media is
6 closely following the case and Bibiyan is giving interviews on the case. See *fns.*
7 2-27.

8 Further, as it involves the compensation and legal rights of actors and
9 actresses, it extends to the entire film and television industry. There is no doubt
10 that the ultimate holding in this case will impact the film and television industry in
11 California. *See fns.* 2-27.

12 **D. Plaintiff Cannot Demonstrate a Probability of Prevailing on Her
13 Claim against the Anti-SLAPP Defendants.**

14 “[I]f the defendant meets their burden, the plaintiff must demonstrate that
15 their complaint is nevertheless “legally sufficient and supported by a sufficient
16 *prima facie* showing of facts to sustain a favorable judgment if the evidence
17 submitted by the plaintiff is credited.” *Woulfe*, 2022 WL 18216089, at *2.
18 Plaintiffs’ FAC fails to allege facts demonstrating that the ends of justice require
19 the imposition of the “extreme remedy” of joint liability against the Anti-SLAPP
20 Defendants. *See Giannetta v. Marmel*, No. 20-1410 (RGK)(KK), 2021 WL
21 2954076, at *2 (C.D. Cal. May 25, 2021).

22 The purpose of the alter ego doctrine is to ensure that Plaintiffs receive full
23 relief for their claims if the Anti-SLAPP Defendants are attempting to evade
24 liability through corporate skullduggery:

25 The essence of the alter ego doctrine is that justice be
26 done. “What the formula comes down to, once shorn of
27 verbiage about control, instrumentality, agency, and
28 corporate entity, is that liability is imposed to reach an

equitable result." Thus the corporate form will be disregarded only in narrowly defined circumstances and only when the ends of justice so require.

Mesler v. Bragg Management Co., 39 Cal.3d 290, 301 (1985) (citations omitted). Critically, Plaintiff does not allege that she could not receive full relief for her claims from VXN alone.

Alter ego liability only exists when “(1) ‘there is such unity of interest and ownership that the separate personalities’ of the corporation and the individual (or other entity) ‘no longer exist’ and (2) ‘failure to disregard the corporation would result in fraud or injustice.’” *Activision Publ’g, Inc. v. EngineOwning UG*, No. 22-51 (MWF)(JCx), 2023 WL 3272399, at *6 (C.D. Cal. Apr. 4, 2023). Plaintiff “must allege specific facts supporting both of the elements of alter ego liability.” *Lennard v. Yeung*, No. 10-9322 (MMM)(AGRx), 2012 WL 13006214, at *7 (C.D. Cal. Feb. 23, 2012) (citations omitted). This is true for both corporate and individual alter egos. *See Wady v. Provident Life & Accident Ins. Co. of Am.*, 216 F. Supp. 2d 1060, 1066 (C.D. Cal. 2002) Since Plaintiff does not adequately allege facts that the Anti-SLAPP Defendants are so intertwined with VZN that they do not have separate existences or any resulting fraud or injustice, the Court should dismiss the joint liability allegations against the Anti-SLAPP Defendants.

1. Plaintiff Does Not Allege Sufficient Facts to Establish Joint Liability on Strike 3 or General Media.

Plaintiff’s new allegations against Strike 3 and General Media fail to plead the required facts for joint liability. Plaintiff alleges that Strike 3 is the “the parent company for VXN GROUP” and that Strike 3 is the copyright holder. [Dkt. 26, at ¶13] Plaintiff further speculates—without alleging any *facts*—that Strike 3 “maintains a level of control over VXN GROUP and its employees” such that the policies “of VXN GROUP are truly the policies and procedures of STRIKE 3.” [Dkt. 26, at ¶19] Plaintiff also alleges on information and belief that General Media “is a

1 subsidiary of [VXN] and serves as another key instrument in the wrongful actions
2 committed against Plaintiff and Class Members.” None of these conclusory
3 allegations show these corporations are alter egos of VXN GROUP.

4 Even if Strike 3 were VXN’s parent company, “[f]or a parent to be liable for
5 the misdeeds of its subsidiaries under an alter ego theory, the parent must play a
6 role in the misdeeds.” *Tatung Co., Ltd. v. Shu Tze Hsu*, 217 F. Supp. 3d 1138, 1181
7 (C.D. Cal. 2016) (collecting cases) (emphasis added). But Plaintiff’s barebone
8 allegation that Strike 3 “control[s]” VXN and its employees fails to state what
9 actions—if any—Strike 3 engaged in to violate Plaintiff’s rights. With respect to
10 General Media, labeling it a “key instrument in the wrongful actions” without a
11 single *fact* in support amounts to a conclusory “the-defendant-unlawfully-harmed-
12 me accusation” that also falls short of plausibility. Thus, Plaintiff’s joint liability
13 claims against Strike 3 and General Media fail again.

14 In sum, the Court should dismiss Miller, Strike 3, and General Media from
15 this action without leave to amend because Plaintiff has failed to pled facts
16 demonstrating that: “(1) ‘there is such unity of interest and ownership that the
17 separate personalities’ of the corporation and the individual (or other entity) ‘no
18 longer exist’ and (2) ‘failure to disregard the corporation would result in fraud or
19 injustice.’” *Activision Publ’g, Inc.*, 2023 WL 3272399, at *6. Since Plaintiff has
20 wasted her opportunity to amend, the Court should dismiss the joint liability
21 allegations without leave to amend. *See MacRae v. HCR Manor Care Servs., LLC*,
22 No. 14-715 (DOC)(RNBx), 2018 WL 10164063, at *4 (C.D. Cal. Mar. 5, 2018)
23 (dismissing alter ego theory with prejudice for “failing to substantively amend
24 allegations that were dismissed as inadequate”).

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1 2. Plaintiff Fails to Allege Miller Engaged in any Conduct that
2 would Impose Joint Liability Upon Him.

3 The FAC's new allegations against Miller are merely superficial add-ons.
4 [*Compare* Compl., at ¶¶ 12, 16, with FAC (**Dkt. 26**), at ¶¶ 12, 18] These
5 amendments allege that Miller, VXN Group's executive producer, "engaged in"
6 hiring and policy decisions, and "was often present on set." [**Dkt. 26**, at ¶18] These
7 facts do not establish a unity of interests, let alone a fraud or injustice. *See*
8 *Cambridge Elecs. Corp. v. MGA Elecs., Inc.*, 227 F.R.D. 313, 329 (C.D. Cal. 2004)
9 ("["A] court should not presume, in the absence of contrary evidence, that corporate
10 officers are improperly discharging their duties."); *see also Fireworks Lady & Co.,*
11 *LLC v. Firstrans Int'l Co.*, No. 18-10776 (CJC)(MRWx), 2019 WL 6448943, at *5
12 (C.D. Cal. Aug. 8, 2019) (dismissing alter ego theory alleging that the president
13 "dominate[d] and control[ed] the corporate defendants").

14 There is also a passing reference to Miller's purported violation of Labor
15 Code § 558.1, where Miller allegedly "violated, or caused to be violated, the above-
16 referenced and below-referenced Labor Code provisions." [**Dkt. 26, at ¶ 18**] As
17 with most of Plaintiff's counsel's Complaints, the allegations merely parrot the
18 statutory language. Plaintiff's attempts to bolster the claim by alleging "that
19 MILLER directly created the policies and procedures put forth by VXN GROUP"
20 and "played an active role in the enforcement of those policies and procedures"
21 remain illusory. [**Dkt. 26, at ¶18**] However, Plaintiff fails to allege that Miller was
22 personally involved in any purported violation.

23 Finally, even if "control" were all that was required, "[t]he court is not
24 required to accept as true legal conclusions couched as factual allegations."
25 *Canchola v. CVS Caremark Corp.*, No. 15-411 (DOC)(RNBx), 2015 WL
26 13918147, at *2 (C.D. Cal. Apr. 15, 2015) (citing *Ashcroft v. Iqbal*, 556 U.S. 662,
27 at 678 (2009)). Plaintiff alleges Miller was involved in the "creation of the policies

1 and procedures” for VXN Group. [Dkt. 26, at ¶¶12, 18] But this deliberately
2 vague, nondescript allegation says nothing about what the alleged policy is, how it
3 was enforced, let alone how it was used to “control” Plaintiff. At best, Plaintiff
4 alleges Miller was “present during many modeling shoots,” *id.*, but if mere
5 presence on set were enough, even the caterer would be a joint employer. *See*
6 *Salazar v. McDonald’s Corp.*, 944 F.3d 1024, 1029 (9th Cir. 2019) (exercising
7 “quality control” does not form a joint employer relationship); *Martinez v. Combs*,
8 49 Cal. 4th 35, 75 (2010), as modified (June 9, 2010). The recitations of the
9 allegations against Strike 3 and General Media are just as unavailing. Plaintiff notes
10 that “since Strike 3 [is] the copyright holder for VXN,” Strike 3 “had a role in
11 controlling [Plaintiff’s] working conditions[.]” [Dkt. 26 at ¶13] Not only is this
12 allegation conclusory, it is illogical. Being a rightsholder is a far cry from
13 exercising control over someone’s employment. Plaintiff similarly doubles down
14 on General Media, contending that because General Media is “the sole distributor
15 of” VXN’s films, General Media “exerts a level of control over VXN where it
16 controls the working conditions of [Plaintiff.]” [Dkt. 26 at ¶14] Since Plaintiff’s
17 conclusory allegations against Miller fail to establish a basis for joint liability, the
18 Court should dismiss Miller without leave to amend.

19 **V. UPON PREVAILING, DEFENDANTS WILL FILE A SEPARATE**
20 **MOTION FOR ATTORNEY’S FEES AND COSTS.**

21 A party may file a noticed motion for attorney’s fees after receiving a
22 successful ruling on the anti-SLAPP motion. *Catlin Ins. Co., Inc. v. Danko*
23 *Meredith Law Firm, Inc.*, 73 Cal. App. 5th 764, 772–784, (2022) (discussing fees
24 recovery options and timing issues).

1 **VI. CONCLUSION**

2 For the foregoing reasons, Defendants respectfully requests the Court grant
3 this Motion to dismiss the claims against the Anti-SLAPP Defendants in Plaintiff's
4 FAC without leave to amend.

5
6 Dated: November 20, 2023

Respectfully submitted,

7 KANE LAW FIRM

8 By: /s/ Brad S. Kane

9 Brad Kane

10 Eric Clopper

11 Attorneys for Defendants

12 VXN Group LLC; Strike 3 Holdings,
13 LLC; General Media Systems, LLC;
14 and Mike Miller

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